

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1750 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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HUSSAIN @ BABLU GULAMMOHAMMED NAKHUDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1750 of 2001
MR ANIL VARMA FOR MR MM TIRMIZI for Petitioner No. 1
MR K.T.DAVE, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat

City, Surat, vide order dated February 10, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 2 cases for the commission of offences punishable under Sections 451, 447 and 420 falling under Chapter 17 of the IPC are registered against the petitioner which are pending at investigation stage and statements of two witnesses were recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act are exercised by the detaining authority by not disclosing the names of the witnesses.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr Anil Varma, learned advocate for the petitioner has restricted his arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, order of detention is vitiated. Besides this, he has also contended that in the grounds of detention, detaining authority has considered two cases registered against the petitioner, one is of the year 1998 and the other is of 1999. So far as the two cases registered against the petitioner are concerned, they are very old and therefore, it cannot be said that the petitioner had involved himself in the activities which were prejudicial to the maintenance of the public order. The order of detention came to be passed on February 10, 2001 and therefore, on account of delay, which is not explained by the detaining authority, order of detention is vitiated. He has further contended that nondisclosure of the identity of the witnesses whose statements are recorded, the privilege is wrongly claimed by the detaining authority as it has not been supported by the affidavit in reply. He therefore, urged to quash and set aside the impugned order by allowing the petition and setting the petitioner at liberty forthwith.

5. Mr. K.T.Dave, learned AGP appearing for the respondent State has opposed the petition though affidavit in reply is not filed. He contended that the last offence registered against the petitioner came to be registered in the year 1999 and after his release he continued his antisocial activities which were clearly disclosed in the statements of witnesses recorded on February 2, 2001 and February 3, 2001 and therefore, in view of continuous involvement of the petitioner in the alleged illegal activities he should not be set at liberty. Moreover, order of detention came to be passed after considering all the aspects of the matter and more particularly continuous involvement of the petitioner in illegal activities. He therefore, urged that the petition may be rejected.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order, there is no manner of doubt that the first offence was registered against the petitioner in the year 1998 whereas the second offence was registered in the year 1999 and the impugned order of detention came to be passed on February 10, 2001. But prior to that, detaining authority has also recorded the statements of two witnesses on February 2, 2001 and February 3, 2001 upon which reliance is placed while passing the detention order. But no offence is registered against the petitioner on the basis of the said statements and therefore, it is clear that the said statements were recorded only with a view to cover up the gap between date of the registering the last complaint against the petitioner and the date of the order of detention, and therefore there is a delay of about 13 months in passing the impugned order of detention.

8. In the case of UNHAND PARKAS V. STATE OF UP AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. Similar view is also expressed by this Court in ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381.

10. Applying the principles of the aforesaid two cases to the facts of the present case, in the instant case, the last offence registered against the petitioner

in the year 1999 for commission of the offences under Sections 420, 120(B) and 114 of IPC could not be a proximate cause and, therefore, unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself. So far as other grounds of detention i.e. recording of statements of two witnesses is concerned, privilege under Section 9(2) is claimed by the detaining authority by not disclosing the identity of the witnesses which is reflected in the order but not supported by affidavit in reply. Therefore, according to me, privilege is not rightly claimed. Besides this, it can be said that the statements of two witnesses were recorded with a view to cover up the gap between the date of registering of the last complaint against the petitioner and the date of the order of detention, detaining authority has, therefore, recorded the statements of two witnesses without registering offences against the petitioner on the basis of the said statements. Therefore, on the ground of delay, privilege claimed under Section 9(2) of the Act is not genuine and the order of detention deserves to be quashed and set aside and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated February 10, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)
Jayanti*